

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LORETTA JOHNSON, et al.,

Plaintiffs,

v.

CHARTER COMMUNICATIONS, INC, et
al.,

Defendants.

Case No. 21-cv-06135-HSG (TSH)

DISCOVERY ORDER

Re: Dkt. Nos. 46, 47, 49

The parties have a privilege dispute that has unfortunately spun into a number of filings at this point. *See* ECF Nos. 46, 47, 48, 49, 51, 52. The dispute concerns whether certain documents produced by third party UP Digital Marketing, LLC are protected by the common interest privilege and the work product doctrine, which Defendants have invoked. The documents at issue are in ECF No. 47-2, a 70-page .pdf consisting of email strings and some attachments.

These emails are an attempt by Charter and its attorneys to coordinate with UP Digital, a potential co-defendant, to respond to this very lawsuit. Although UP Digital's attorney does not appear to be copied on these emails, their content makes clear UP Digital was consulting with its counsel concerning these matters. These emails also make clear that Charter and UP Digital were engaged in a joint defense strategy. Accordingly, the emails are protected by the common interest privilege, notwithstanding that the written joint defense agreement was entered into later. Further, some of the emails and attachments are also work product. Charter promptly invoked privilege and did not waive it.

Nonetheless, factual documents and evidence do not become privileged simply because they are attached to emails that are. Accordingly, the signed declaration at pages 8-12 and the memorialization of policy at pages 25 and 34 are not privileged or work product, and the Court

1 overrules Defendants' claim otherwise as to those items.¹ The Court sustains Charter's claim of
2 privilege as to the remaining items. The motions to seal at ECF Nos. 47 and 49 are granted.

3 **IT IS SO ORDERED.**

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5 Dated: March 4, 2022

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7 THOMAS S. HIXSON
8 United States Magistrate Judge
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¹ The declaration seems to be the scanned version of ECF Nos. 35-2 and 36-3.